

BRB No. 08-0512

A.S.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
JEFFBOAT, LLC	)	DATE ISSUED: 12/17/2008
	)	
Employer/Carrier	)	
Petitioner	)	DECISION and ORDER

Appeal of the Attorney Fee Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Melissa M. Olson (Embry & Neusner), Groton, Connecticut, for claimant.

Laurie Goetz Kemp and Scott A. Dyer (Woodward, Hobson & Fulton, LLP), Louisville, Kentucky, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Attorney Fee Order (2005-LHC-01780) of Administrative Law Judge Joseph E. Kane rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRB 272 (1980).

Claimant filed a claim for benefits for a respiratory impairment allegedly due, at least in part, to his employment-related exposure to asbestos. The administrative law judge found that claimant's respiratory condition is work-related, and he awarded claimant ongoing disability benefits pursuant to Section 8(c)(23) of the Act, 33 U.S.C. §908(c)(23). Subsequently, the administrative law judge awarded claimant's counsel an attorney's fee and costs of \$12,698.36, payable by employer.

Employer appeals, contending the administrative law judge erred in awarding the fee based on hourly rates of \$250 and \$261. Claimant responds, urging affirmance.

Employer contends the administrative law judge erred in awarding counsel hourly rates based on her customary billing charge in Connecticut where her practice is located. Rather, employer argues that the administrative law judge was required to base claimant's hourly rate on the lower hourly rate prevailing in Indiana where the claim arose. Moreover, employer contends that the case was not complex, and that an attorney in local area could have handled the claim.

We reject employer's contention of error. The regulation governing fee awards, 20 C.F.R. §702.132, states, *inter alia*, that "[a]ny fee award approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded..." Pursuant to this regulation, the attorney must state her "normal billing rate." 20 C.F.R. §702.132(a). In this case, the administrative law judge appropriately addressed the regulatory factors in accordance with 20 C.F.R. §702.132. Order at 3; *see Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10<sup>th</sup> Cir. 1997). In addition, the administrative law judge placed on counsel the burden of establishing that her requested hourly rates are reasonable. In this regard, the administrative law judge took judicial notice of the Altman Weil 2005 *Survey of Law Firm Economics* and found that counsel's requested hourly rates are in the mid-range for the New England area given her level of experience. Order at 4. The administrative law judge also found that longshore work warrants a higher hourly rate than state workers' compensation cases, and that counsel's skill and expertise support a higher rate. The administrative law judge also relied on fee awards counsel received in other cases. *Id.*

Contrary to employer's contention, the administrative law judge's fee award does not run afoul of the Sixth Circuit's unpublished decision in *Harmon v. McGinnis, Inc.*, No. 07-3073, 2008 WL 344707, 42 BRBS 1(CRT) (6<sup>th</sup> Cir. Feb. 7, 2008). In *Harmon*, claimant's non-local counsel appealed an awarded rate of \$250, asserting entitlement to an hourly rate of \$400 based on his Washington D.C. locale. In affirming the \$250 rate, the court noted that counsel had been awarded a rate \$50 per hour higher than local counsel and that the administrative law judge had supported this rate with findings regarding the attorney's superior qualifications and extraordinary services. The court also found it proper to rely on prior awards in determining an appropriate hourly rate. *See also B&G Mining, Inc. v. Director, OWCP*, 522 F.2d 657, 42 BRBS 25(CRT) (6<sup>th</sup> Cir. 2008). In this case, the administrative law judge similarly found the higher rate claimed by non-local counsel supported by other fee awards and by her level of skill and expertise. Order at 4. Employer has not established that the administrative law judge abused his discretion in this regard. *B&G Mining*, 522 F.2d 657, 42 BRBS 25(CRT).

Therefore, as the administrative law judge adequately addressed the relevant factors and employer has not shown that the administrative law judge abused his discretion in awarding an attorney's fee, we affirm the administrative law judge's fee award. *See generally Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3<sup>d</sup> Cir. 2001).

Accordingly, we affirm the administrative law judge's Attorney Fee Order.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge